

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**VS.**

**ANDREW NESPOR,**

**Defendant.**

**CASE NO. 8:08CR57**

## TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report (“PSR”) and the parties’ objections thereto (Filing Nos. 38, 39). See “Order on Sentencing Schedule,” ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

### ***Government's Objections***

The government objects to the enhancement in ¶ 31 for possession of a gun and ammunition under U.S.S.G. § 2D1.1. However, the enhancement is contemplated in the plea agreement. (Filing No. 29, ¶ 8(d).) This objection is denied, and the plea agreement will be upheld.

The government also objects to the drug quantity reflected in the PSR, as it exceeds the quantity and base offense level contemplated in the plea agreement. The objection is granted, and the plea agreement will be honored.

### ***Defendant's Objections***

The Defendant's objections to the drug quantity reflected in the PSR is granted. The other objections are denied primarily because these matters do not relate to the sentencing guideline calculation.

IT IS ORDERED:

1. The Court's tentative findings are that the government's objections (Filing No. 39) to the PSR are granted as to ¶ 30 and denied as to ¶ 31 of the PSR;
2. The Court's tentative findings are that the Defendant's objections (Filing No. 38) to the PSR are granted as to ¶ 30 of the PSR and otherwise denied;
3. The parties are notified that my tentative findings are that the PSR is correct in all other respects;
4. If **any** party wishes to challenge these tentative findings, the party shall file, as soon as possible but in any event before sentencing, and serve upon opposing counsel and the court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;
5. Absent submission of the information required by paragraph 3 of this order, my tentative findings may become final;
6. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 12<sup>th</sup> day of September, 2008.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge